

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

<b>In the Matter of</b>	)	
	)	
<b>UNIVERSAL SERVICE CONTRIBUTION METHODOLOGY</b>	)	<b>WC Docket No. 06-122</b>
	)	
<b>A NATIONAL BROADBAND PLAN FOR OUR FUTURE</b>	)	<b>GN Docket No. 09-51</b>
	)	

**REPLY COMMENTS OF THE INDEPENDENT TELEPHONE  
& TELECOMMUNICATIONS ALLIANCE**

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## **Table of Contents**

I.	INTRODUCTION AND SUMMARY .....	1
II.	THE COMMISSION SHOULD ADOPT A HYBRID NUMBERS/CONNECTIONS-BASED CONTRIBUTION MECHANISM AS PART OF ITS LONG-TERM REFORM EFFORTS .....	2
III.	THE COMMISSION SHOULD ADOPT SHORT-TERM FIXES WHILE IT CONSIDERS LONG-TERM CONTRIBUTION REFORM .....	5
A.	Changes to FCC Form 499 and Instructions Should Occur Through Notice and Comment Procedures .....	5
B.	The Commission Should Provide Amnesty for Good Faith Interpretations of FCC Form 499 and Its Instructions .....	6
C.	The Commission Should Adopt Symmetrical Contribution Liability and Refund Periods.....	7
D.	The Commission Should Clarify the Contribution Obligation of MPLS-Enabled Services .....	8
E.	The Commission Should Simplify the Wholesale Services Exemption .....	10
F.	The Commission should Adopt Realistic Prepaid Calling Card Reporting Requirements .....	12
G.	The Commission Should Modify Its <i>De Minimis</i> Rules.....	12
IV.	CONCLUSION.....	14

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The Independent Telephone and Telecommunications Alliance (“ITTA”) hereby submits its reply comments in response to the *Further Notice of Proposed Rulemaking* (“FNPRM”) issued on April 30, 2012 by the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned proceedings.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY**

In its initial comments in this proceeding, ITTA set forth a workable, sustainable framework for contribution reform based on a hybrid numbers/connections-based contribution methodology.<sup>2</sup> ITTA believes that such an approach has many advantages over one-dimensional proposals for long-term reform of the federal Universal Service Fund (“USF”) contribution system. Under ITTA’s proposal, the Commission would assess contributions on the following basis: a flat monthly fee for each working residential and business number, and a tiered flat monthly charge for each connection to all assessable services. ITTA’s hybrid approach

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<sup>1</sup> *In the Matter of Universal Service Contribution Methodology; A National Broadband Plan for Our Future*, Further Notice of Proposed Rulemaking, WC Docket Nos. 06-122, GN Docket No. 09-51 (rel. April 30, 2012).

<sup>2</sup> Comments of the Independent Telephone & Telecommunications Alliance, WC Docket No. 06-122, *et al.* (filed July 9, 2012).

encapsulates each of the principles that should underlie any contribution methodology the Commission adopts: competitive neutrality, flexibility, predictability, regulatory parity, scalability, administrative ease, simplicity, and accountability.

However, ITTA recognizes that comprehensive reform may take some time to develop and implement. Thus, in its reply comments, ITTA focuses on several short-term measures that could ameliorate some of the problems with the Commission's current revenues-based contribution system. These short-term fixes would provide greater transparency and certainty in the FCC Form 499 process, enhance competitive neutrality among USF contributors by clarifying contribution obligations for Multi-Protocol Label Switching ("MPLS")-enabled services, streamline the wholesale-resale confirmation process by simplifying the wholesale services exemption, promote fairness and predictability by adopting symmetrical contribution liability and refund periods as well as realistic reporting requirements related to prepaid calling card revenues, and reduce administrative burdens and legal risks for contributors that potentially qualify for *de minimis* treatment under the Commission's USF contribution rules.

These measures would provide interim relief while the Commission undertakes much-needed long-term reform, ideally based on the hybrid numbers/connections-based framework advanced by ITTA in its comments.

## **II. THE COMMISSION SHOULD ADOPT A HYBRID NUMBERS/CONNECTIONS-BASED CONTRIBUTION MECHANISM AS PART OF ITS LONG-TERM REFORM EFFORTS**

As numerous commenters have noted, reform of the federal USF contributions methodology is long overdue.<sup>3</sup> The dramatic and fundamental changes to the

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<sup>3</sup> See, e.g., Comments of Verizon, WC Docket No. 06-122, *et al.* (filed July 9, 2012), at 1-2; Comments of the National Cable & Telecommunications Association, WC Docket No. 06-122,

telecommunications industry that have occurred since the current contributions mechanism was implemented fifteen years ago have rendered the system unworkable. The lack of clear guidance under the current system as to when and upon whom the contribution obligation applies have incentivized certain providers to interpret the Commission's rules to minimize their contribution obligations.<sup>4</sup> This has increased the contribution burden on traditional services and providers, putting them at a competitive disadvantage relative to other services and providers that have managed to avoid sharing in the contribution burden. The Commission should expeditiously adopt new rules that reflect the new marketplace realities.

ITTA believes that, to be successful, the FCC's reforms must be guided by the following basic principles: competitive neutrality, flexibility, predictability, regulatory parity, scalability, administrative ease, simplicity, and accountability.<sup>5</sup> These principles ensure that like services are regulated in a similar manner, that the contribution system can flexibly accommodate innovation and changes in technology, and that all entities that benefit from the federal universal service system share in the contribution obligation. A system based on these principles can

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*et al.* (filed July 9, 2012), at 2; Comments of COMPTTEL, WC Docket No. 06-122, *et al.* (filed July 9, 2012), at 1.

<sup>4</sup> *See, e.g.*, Comments of the United States Telecom Association, WC Docket No. 06-122, *et al.* (filed July 9, 2012), at 5 ("US Telecom Comments"); Comments of AT&T, WC Docket No. 06-122, *et al.* (filed July 9, 2012), at 2; Comments of CenturyLink, WC Docket No. 06-122, *et al.* (filed July 9, 2012), at 10 ("CenturyLink Comments").

<sup>5</sup> A number of commenters have expressed support for these principles. *See, e.g.*, Comments of Sprint Nextel, WC Docket No. 06-122, *et al.* (filed July 9, 2012), at 9 (in reforming the contribution methodology, the Commission should adopt an approach that "help[s] ensure a competitively neutral USF assessment mechanism" and "encompasses all of the services and service providers that benefit from a broadband-centric universal service program"); CenturyLink Comments at 9-10 (the contribution "assessment base should be as broad as possible consistent with the range of service being supported, and the base should be designed to expand as new services and technologies are developed and mature"); Comments of CTIA – The Wireless Association, WC Docket No. 06-122, *et al.* (filed July 9, 2012), at 7 ("Along with non-discrimination and technological neutrality, efficiency and simplicity also are valuable principles for the Commission's reform efforts.")

accommodate various levels of contributions, can expand or contract to match the size of the overall budget for universal service support, and would consist of rules that are straightforward, non-burdensome, and more easily enforced. These principles also would ensure that service providers are afforded the regulatory certainty they need in order to formulate business plans and make reasoned investment decisions.

In its comments, ITTA proposed a contribution methodology that encapsulates these principles and provides a workable, sustainable contribution framework. Specifically, ITTA proposed a hybrid numbers/connections-based approach that assesses contributions on the following basis: a flat monthly fee for each working residential and business number, and a tiered flat monthly charge for each connection to all assessable services. ITTA urges the Commission to carefully consider this proposal as it undertakes long-term, comprehensive reform of the federal contributions system.

The hybrid numbers/connections-based approach ITTA proposed has several advantages over a straight revenues-based or numbers-based contribution system. Among other things, ITTA's proposal decreases opportunities for arbitrage by eliminating the arbitrary self-categorization of services by providers. It promotes competitive neutrality by ensuring that consumers pay a similar flat rate for similar services. It provides for greater predictability and stability of providers' contributions since providers know or can easily identify how many numbers and connections they have in operation at any given time. It also advances regulatory parity by enabling the Commission to impose USF contributions on all services and service providers that directly or indirectly utilize and derive benefit from the nation's broadband networks.

As various commenters have indicated, the FCC has broad, permissive authority under Section 254 of the Act to craft a new contribution system and to expand the base of services and providers that are subject to contribution obligations.<sup>6</sup> The significant industry developments that have occurred over the past fifteen years mandate changes to the rules, and the Commission should rely on its permissive authority to adopt long-term reforms that reflect the current marketplace.

### **III. THE COMMISSION SHOULD ADOPT SHORT-TERM FIXES WHILE IT CONSIDERS LONG-TERM CONTRIBUTION REFORM**

Although comprehensive reform of the current USF contribution system is of utmost importance and should be the highest priority for the Commission, ITTA supports interim relief under the current contribution framework that would “provide greater transparency and clarity regarding contribution obligations, reduce costs associated with administering the contribution system, and improve the operation and administration of the contributions system” while the Commission is considering comprehensive, long-term contribution reform.<sup>7</sup>

#### **A. Changes to FCC Form 499 and Its Instructions Should Occur Through Notice and Comment Procedures.**

ITTA supports the Commission’s proposal to provide notice and seek comment on its annual proposed changes to FCC Form 499 and associated instructions before they take effect.<sup>8</sup> The changes to the Annual Telecommunications Worksheets and the accompanying instructions are often a source of confusion for contributors, who currently have a very limited window of

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<sup>6</sup> See, e.g., Comments of the National Telecommunications Cooperative Association, the Organization for the Promotion and Advancement of Small Telecommunications Companies, and the Western Telecommunications Alliance, WC Docket No. 06-122, *et al.* (filed July 9, 2012), at 2-8; Comments of Google Inc., WC Docket No. 06-122, *et al.* (filed July 9, 2012), at 8-9; Comments of Time Warner Cable, WC Docket No. 06-122, *et al.* (filed July 9, 2012), at 3-7.

<sup>7</sup> *FNPRM* at ¶ 342.

<sup>8</sup> *Id.* at ¶ 346.

time in which to familiarize themselves with the changes and take appropriate steps to account for such modifications before filing. This short timeframe, coupled with what are sometimes extensive and substantive changes accompanied by little explanation, force contributors to make their best guess in interpreting what certain modifications may mean and how to properly report certain information.

To provide more transparency and give interested parties the opportunity to better understand the changes before they take effect, the Commission should identify any proposed changes to Form 499 or its instructions, explain the reasons for those changes, and seek comment on such changes on an annual basis. Implementing a notice and comment process would aid the Commission in identifying and clarifying any modifications that may be ambiguous so that the resulting revisions are understandable to contributors. This, in turn, would facilitate consistency and accuracy in reporting and promote a more streamlined contributions process for both contributors and USAC. In addition, ITTA supports the Worksheets being made available in spreadsheet format, which would make them easier for some parties to complete.

**B. The Commission Should Provide Amnesty for Good Faith Interpretations of FCC Form 499 and Its Instructions.**

ITTA supports the suggestion of some parties that the Commission provide amnesty to providers who interpret Form 499 and its instructions in good faith, even if the Commission disagrees with that interpretation. Specifically, the Commission should adopt the process proposed by US Telecom that would give providers an opportunity to explain their good faith interpretation of certain aspects of Form 499 or its instructions and ask the Commission to confirm or modify the documents accordingly.<sup>9</sup> Should the Commission disagree with the provider's interpretation, there would be no liability on the part of the provider, such as through

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<sup>9</sup> US Telecom Comments at 10.



an enforcement action or adverse audit finding by USAC, so long as the provider was acting in good faith.

This process would be useful as an additional tool to help the Commission identify aspects of the form or instructions that are ambiguous, and make modifications that would provide clarity for all parties in preparing their filings. As indicated above, the Commission should put any such modifications out for public comment prior to incorporating them in the form or instructions.

**C. The Commission Should Adopt Symmetrical Contribution Liability and Refund Periods.**

ITTA believes that the Commission should adopt symmetrical contribution liability and refund periods so that the contribution system is more equitable for contributors and provides more certainty to the Commission. Under the current rules, providers have an ongoing obligation to update their forms when they would incur increased contribution liability, but are only provided one year in which to modify their forms when they would be entitled to a refund.

As US Telecom points out, there are often very good reasons why a provider cannot meet the one-year deadline for amending its Form 499. Among other things, “government agencies – such as state public service commissions, taxing authorities, and even the Commission itself – and internal and external auditors may make decisions that require restatements extending beyond one year.”<sup>10</sup> For reasons of fairness and consistency, the Commission should adopt a uniform period in which providers may file an amended Form 499 for purposes of either reducing or increasing the amount they must contribute to the Fund.

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<sup>10</sup> *Id.* at 11.

**D. The Commission Should Clarify the Contribution Obligation of MPLS-Enabled Services.**

It is imperative for the Commission to take action with respect to contribution obligations for MPLS-enabled services on a short-term basis as it considers long-term contribution reform. Much confusion surrounds the potential USF contribution obligations of companies offering enterprise data services relying on MPLS. Many MPLS-enabled service providers consider all MPLS-enabled services to be non-assessable information services for purposes of USF contribution obligations. Other providers of MPLS-enabled services identify transmission services provided in conjunction with such services and make USF contributions based only on revenues derived from those services.

Issues concerning the contribution obligations for MPLS-enabled services have been pending for several years and are long overdue for clarification. As more and more providers migrate to MPLS platforms, the need for the Commission to address the contribution obligations of such services only becomes more urgent. Commission resolution of these issues through adoption of uniform contribution requirements for providers of MPLS-enabled services would eliminate competitive disparities among USF contributors and ensure the continued growth and sustainability of the USF as it transitions to support broadband services.

Several parties urge the Commission to resolve the current uncertainty surrounding MPLS-enabled services by establishing MPLS Assessable Revenue Component (“MARC”) proxies for imputation purposes, which would be published in a uniform rate schedule based on the access transmission facilities connecting the customer to the provider’s MPLS network.<sup>11</sup> Individual providers of MPLS-enabled services would utilize the Commission’s MARC proxy

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<sup>11</sup> See Letter from Marybeth Banks, Director – Government Affairs, Sprint Nextel, *et al.* to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122 (filed Mar. 29, 2012).

schedule to determine the imputed assessable revenues for the access transmission components they use to provide MPLS-enabled services to their customers, which, in turn, would determine the base for which USF contributions would be made for these services.

By establishing a uniform baseline for USF contributions, the proposed MARC proxies would ensure that all providers of MPLS-enabled services contribute on a similar basis on a portion of the integrated revenues. Such contributions also would be subject to the same USF contribution factor as other USF assessable services, which would allow overall USF contributions for MPLS-enabled services to fluctuate as the USF contribution factor changes.

CenturyLink also urges the Commission to clarify that some portion of the revenues from MPLS-enabled services are assessable.<sup>12</sup> Under CenturyLink's proposal, the Commission would require contributions on the transmission component of MPLS-enabled services and establish a safe harbor derived from an industry baseline -- i.e., the NECA tariff -- for companies that do not offer transmission on a stand-alone basis. However, CenturyLink believes that companies that bill separately for the transmission component in MPLS offerings must be permitted to use their actual revenue for the contributions calculation, provided that the revenue reflects a reasonable allocation. To do otherwise would introduce substantial legal risk and operational cost. In this regard, where the transmission component is a tariffed offering, it would enjoy a presumption of reasonableness, and where the transmission component is rate regulated, it must be deemed reasonable.

The common objective underlying each of these proposals is to achieve competitive neutrality. Adopting a uniform contribution methodology applicable to MPLS-enabled services

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<sup>12</sup> See Letter from Melissa E. Newman, Vice President – Federal Regulatory Affairs, CenturyLink, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122 (filed Apr. 4, 2012).

would resolve the uncertainty surrounding the contribution obligations for MPLS-enabled services and decrease customer confusion and provider frustration by leveling the playing field among USF contributors. It also would stabilize a growing component of the USF contribution base as the Commission considers long-term reform of the USF contribution system. For these reasons, the Commission should carefully consider these proposals as it crafts an interim solution to address the myriad problems created by the current ambiguity relating to contribution obligations for MPLS-enabled services

**E. The Commission Should Simplify the Wholesale Services Exemption.**

The Commission should simplify the wholesale-resale confirmation process. As the Commission has recognized, there is a need “to provide greater clarity regarding the respective obligations of wholesalers and their customers, which has been subject to much dispute.”<sup>13</sup> To address such issues, ITTA supports the proposal advanced by Cincinnati Bell to simplify administration of the wholesale services exemption.<sup>14</sup>

Under Cincinnati Bell’s approach, if a wholesale customer is a USF contributor, all services the customer purchases from a wholesale provider would be exempt from the contribution obligation. The wholesale customer would only need to provide the wholesale provider with its Form 499 ID and the wholesale provider could check this information against the FCC’s Form 499 filer ID database to determine whether the customer is a contributor. This approach would eliminate the need for a cumbersome wholesale-resale certification process and associated recordkeeping requirements. The only records the wholesale provider would need to

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<sup>13</sup> *FNPRM* at ¶ 100.

<sup>14</sup> Comments of Cincinnati Bell Inc., WC Docket no. 06-122, *et al.* (filed July 9, 2012), at 13-16 (“Cincinnati Bell Comments”).

keep would be its wholesale customers' Form 499 ID numbers and documentation showing the results of the provider's check against the Form 499 ID database.

To avoid concerns that resellers may be escaping contribution liability on any services that are not used to provide assessable services to end users, the Commission could provide a mechanism on Form 499 for the reseller to report any services that it purchased from a wholesale provider that were not incorporated into an assessable end user service. As Cincinnati Bell points out, this approach “would take the onus off of the wholesale provider to police the activities of its wholesale customers and place responsibility for accurately reporting USF liability on the wholesale customer where USAC can audit and enforce compliance directly with the entity who has the responsibility for accurately reporting how they used the services they purchased.”<sup>15</sup>

Cincinnati Bell's proposal is the simplest solution to eliminate the burdens associated with the Commission's current wholesale-resale certification requirements and to provide greater certainty to contributors and USAC. ITTA also supports Cincinnati Bell's suggested modifications to Block 3 of FCC Form 499, which would simplify the manner in which providers report wholesale revenue.<sup>16</sup> There is no reason why providers should have to report wholesale revenue at the level of detail currently required by the Commission when wholesale revenue is exempt from assessment. Although there may be limited instances in which a wholesale provider would need to report interstate wholesale revenue (e.g., when a provider uses Block 5 of Form 499 to exclude revenue from non-USF contributing resellers from the TRS contribution base), there is no reason to burden all providers with extra reporting requirements when only a few providers avail themselves of the Block 5 exclusion.

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<sup>15</sup> *Id.* at 15.

<sup>16</sup> *Id.* at 16.

**F. The Commission Should Adopt Realistic Prepaid Calling Card Reporting Requirements.**

ITTA agrees with US Telecom that the Commission should adopt realistic prepaid calling card reporting requirements.<sup>17</sup> The Commission's current rules require providers to contribute based on the face value of the card, not the actual revenue that the provider receives from the retailer or distributor who sells the card to the end user. However, this approach is unrealistic because many cards do not have a face value. Moreover, providers often discount prepaid cards for distributors and retailers, and have no knowledge or control over the retail price of the card.

Given that providers are unable to recover universal service payments from prepaid calling card customers in the first place, the approach currently used by the Commission exacerbates the hit providers take on prepaid services. The Commission should adopt a reporting mechanism for prepaid calling services that addresses their unique characteristics and promotes fairness and ease of administration with respect to contribution obligations for such services.

**G. The Commission Should Modify Its *De Minimis* Rules.**

ITTA agrees with the Commission's proposal to modify its current *de minimis* rules so that *de minimis* treatment is based on a provider's assessable revenues rather than on the amount of its annual contribution.<sup>18</sup> As the Commission has acknowledged, tying *de minimis* status to a provider's annual contribution amount creates administrative burdens and uncertainty for many qualifying providers and USAC. For instance, some providers cannot determine whether they will qualify for *de minimis* status each year until the Commission announces the fourth-quarter contribution factor. As a result, many providers must file quarterly Telecommunications Reporting Worksheets and contribute on a quarterly basis as a precautionary measure. If they do

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<sup>17</sup> US Telecom Comments at 12-13.

<sup>18</sup> *FNPRM* at ¶ 213.

not, and it turns out that they do not qualify for the exemption, the provider will face late filing fees, penalties, and other sanctions.

Furthermore, the uncertainty caused by the Commission's current approach is exacerbated by the fact that it extends beyond potentially qualifying entities to any provider from which they purchase telecommunications. If it turns out that the potentially qualifying provider is *de minimis*, then the underlying provider faces liability for contributions it should have made based on its revenues from sales to that provider. Adopting the Commission's proposal to base *de minimis* status on assessable revenues would fix these problems, greatly reduce administrative burdens, and provide more certainty and predictability for providers and USAC.

ITTA also supports the Commission's proposal to reduce the reporting obligations and regulatory uncertainty for *de minimis* providers with growing revenues by making it optional for such providers to file quarterly Telecommunications Reporting Worksheets for a year after which the contributor qualified as *de minimis*.<sup>19</sup> Such providers would remain obligated to file their annual Form 499; however, making the quarterly filings for the year in which they no longer qualify as *de minimis* optional would "strike a reasonable balance between providing certainty to small (and growing) businesses in the telecommunications marketplace and the need for all telecommunications providers with a substantial presence to contribute to universal service in an equitable manner."<sup>20</sup>

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<sup>19</sup> *Id.* at ¶ 216.

<sup>20</sup> *Id.*

#### **IV. CONCLUSION**

For all of the foregoing reasons, the Commission should expeditiously adopt the proposals for reform of the federal USF contribution system specified in these reply comments.

Respectfully submitted,

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